

Final

Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2003-06 Request No. 867
Issued September 11, 2003

Facts:

The inquiring attorney, a lawyer in private practice, represents clients in matters that are before a municipality's zoning and planning boards. The solicitor and the manager of the municipality have asked the inquiring attorney to represent the municipality in a lawsuit pending in Superior Court. The municipality is a named party in the case in which the owner of real estate located in the municipality alleges that the municipality has prohibited him/her from developing his/her property.

Issue Presented:

Will the inquiring attorney's representation of the municipality in the pending litigation constitute a conflict of interest?

Opinion:

Yes. The inquiring attorney's representation of the municipality in the pending lawsuit would constitute a conflict of interest under Rule 1.7. The inquiring attorney may not represent the municipality unless he/she obtains the consent of the municipality and of those clients who are parties before the municipality's zoning and planning boards.

Reasoning:

Rule 1.7 of the Rules of Professional Conduct entitled "Conflict of Interest: General Rule" states:

- (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
 - (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

In Rhode Island Supreme Court Ethics Advisory Panel Op. 90-36 (1990), the Panel stated that Rule 1.7 precluded a part-time city solicitor from representing a private client who has an interest adverse to the city. The Panel concluded that the interests of a client who is a party to a city's zoning board action occupies a position adverse to the city, and therefore a part-time solicitor could not represent clients before the city's zoning board. Id.

In the instant inquiry, the inquiring attorney currently represents clients who are parties in matters before the municipality's zoning board and planning board. The Panel is of the opinion that those clients occupy a position adverse to the municipality. As such, the inquiring attorney's representation of the municipality in the pending superior court lawsuit constitutes a conflict of interest pursuant to Rule 1.7. The Panel therefore advises the inquiring attorney to decline the representation of the municipality, unless, after consultation, he/she obtains the consent of the municipality and of his/her private clients who have matters before the municipality's zoning board or planning board.

